

regarding Defendants' motions in *limine* is required. Nonetheless, in an abundance of caution, the Nations will briefly address each motion.

First, regarding Defendants' motion in *limine* seeking to limit consideration of the Nations' APA claims to the administrative record—which the Court expressly denied—the Nations respectfully incorporate by reference, and refer the Court to, Plaintiffs' Trial Memorandum Regarding Jurisdiction (Dkt. No. 331) and Plaintiffs' Proposed Findings of Fact and Conclusions of Law (Dkt. No. 334 at Section V) wherein the Nations thoroughly address each of Defendants' misplaced arguments. Additionally, as the Court correctly noted during the pretrial conference (*see* Transcript at 125:15-18), Defendants' "motion in *limine*" is a poorly veiled motion for summary judgment and, as such, violates the Court's Order of March 30, 2015 (Dkt. No. 263) prohibiting further motions for summary judgment. *See also* LCvR56.1(a) ("Absent leave of Court, each party may file only one motion under Fed. R. Civ. P. 56.").

Second, regarding Defendants' motion in *limine* to exclude the testimony of Governor Anoatubby, Chief Pyle and Kevin Gover—which the Court also denied—the Nations submit that these individuals, based on their respective positions, are uniquely qualified to offer testimony regarding the historical relationship and interactions between the Government and the Nations, irrespective of their birth dates. *See* Transcript at 127:19-24 (Court agreeing with the Nations' counsel that "these leaders should be able to testify about knowledge that they have gained in their leadership capacity").

Finally, regarding Defendants' motion in *limine* to exclude all testimony for lack of subject matter jurisdiction, the Court clearly denied such motion by affording the Nations 3 ½ days to offer testimony during the approaching trial. *See* Transcript at 95:4 – 101:25. Moreover, this motion is likewise a veiled motion for summary judgment, given Defendants' suggestion that the Nations should be precluded from presenting *any* testimony at trial. As such, this motion should be denied on its face and for violating the Court's Order of March 30, 2015 (Dkt. No. 263) and Local Rule 56.1(a).

Defendants argue this Court is without subject matter jurisdiction because the Nations seek money damages as a form of relief. As explained by the Nations' counsel during the pretrial conference, that is simply not true. *Id.* at 126:1-8. The Nations seek restoration of their trusts—that is, *equitable* relief, *not* money damages. For a complete discussion of why this Court has jurisdiction over this matter and why the relief the Nations seek is equitable, the Nations respectfully incorporate by reference and refer the Court to Plaintiffs' Trial Memorandum Regarding Jurisdiction (Dkt. No. 331) and Plaintiffs' Proposed Findings of Fact and Conclusions of Law (Dkt. No. 334) at Section V.C, and IX.

Should the Court determine it has not yet denied any of Defendants' motions in *limine* filed on June 15, 2015, the Nations respectfully request oral argument on any such motion.

DATED this 30th day of June, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send email notification of such filing to all registered parties.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: June 30, 2015.

/s/ Michael Burrage

Michael Burrage